

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DT 07-011

Verizon New England Inc., et. al and
FairPoint Communications, Inc.
Transfer of Assets

**Motion of the Office of Consumer Advocate for a Hearing on FairPoint's Motion for
Limited Modification of Merger Condition and
on the Status of FairPoint's Compliance with Other Merger Conditions**

The New Hampshire Office of Consumer Advocate (OCA) hereby requests that the Public Utilities Commission (PUC) hold a hearing on the Motion for Limited Modification of Merger Condition (Motion) filed by FairPoint Communications, Inc. (FairPoint). The OCA also requests that the PUC require FairPoint, at this hearing, to provide a report of, and respond to questions about, the status of its compliance with all conditions of the PUC's approval of the merger on the record. *See* Order 24,823 (February 25, 2008). In support, the OCA states the following facts and law.

1. On February 27, 2009, FairPoint filed the Motion, which seeks to change a significant condition of the PUC's approval of the FairPoint/Verizon merger.
2. The "limited modification" requested translates into millions of dollars of repayment of debt related to the merger.
3. Notwithstanding FairPoint's characterization of this debt repayment as a "voluntary prepayment" under its Credit Agreement, this debt repayment was an explicit condition upon which the PUC granted approval for the merger, as well as a term of its Settlement Agreement with Verizon and Commission

Staff. FairPoint's characterization that the debt reduction required by the Order is a "desired outcome" rather than a condition of approval is also troubling.

4. Despite FairPoint's statement to the contrary, see Motion, p. 2, ¶ 4 ("FairPoint currently believes that it will have sufficient liquidity to meet all of its obligations"), the Motion suggests that the contrary may be true.
5. This suggestion of financial instability, and the necessity of a hearing on FairPoint's Motion, is underscored by the losses reported in FairPoint's Fourth Quarter 2008 Financial Results released yesterday, its declining stock price, and the suspension of its dividend.
6. Pursuant to RSA 365:5 and 374:4, the PUC should require FairPoint to appear at a hearing to respond to questions of the PUC and the parties about the Motion as well as FairPoint's financial status on the record.
7. At this hearing, the PUC should also require FairPoint to report the status of, and respond to questions concerning, its compliance with all conditions of the Order approving the merger on the record.
8. Requiring FairPoint to update the PUC and all of the parties on the status of its compliance with all merger conditions makes sense in light of the financial aspects of many conditions, as well as from the standpoint of efficient use of the parties' time and resources.

9. To help facilitate the process, the OCA has attached discovery requests to FairPoint related to its Motion.

In closing, the OCA requests the following relief:

- A. Schedule a hearing on the Motion;
- B. Require FairPoint, at the hearing, to report and respond to questions about its financial status, and its compliance with all Merger conditions set forth in the PUC's Order 24,823 and the settlement it approved; and
- C. Grant such other relief as justice requires.

Respectfully submitted,

OFFICE OF CONSUMER ADVOCATE

Meredith A. Hatfield, Consumer Advocate
Rorie E.P. Hollenberg, Staff Attorney
21 St. Fruit Street, Suite 18
Concord, New Hampshire 03301
Telephone: (603) 271-1172
meredith.a.hatfield@oca.nh.gov

Certificate of Service

I certify that on this date a copy of this document was provided to all persons on the service list in this docket.

Date: _____

Meredith A. Hatfield, Esq.

OCA Data Requests to FairPoint
DT 07-011
March 6, 2009

1. Please provide FairPoint Communications' internal consolidating financial statements for January and February 2009. At minimum, the statements must include a balance sheet, income statement and cash flow statement. For the Northern New England states, please provide the information at the state level, to the extent it is available. Please be sure to also include the numbers of customers by significant category for each time period and compare to the comparable numbers as of 9/30/08, 10/31/08, 11/30/08, and 12/31/08. Please explain any trends.
2. Please provide the Company's most current financial projections for each quarter of 2009 and for year-end 2010. At minimum, the projections must include balance sheets, income statements and cash flow statements. All significant assumptions used in formulating the projections must also be provided, including customer count projections. For the Company's NNE operations, the projections should be provided at the state level, to the extent available. To the extent that is not obvious from these projections, please also state by what amount total principal repayments are expected to exceed \$35 million during calendar 2009 as referenced on page 3 of FairPoint's February 27, 2009 Motion.
3. Does FairPoint currently have the ability to buy back its 13 1/8% senior notes due 2018? If so, please describe the Company's efforts to undertake a buy back of these notes. Please be sure to describe the potential amount and timing of any buy back. Please explain if Verizon's agreement is required, and if so has it been sought and/or received?
4. Please describe in detail the Company's current and proposed marketing efforts to retain and win back customers and increase market share in all service categories. Please provide the projected costs of the Company's marketing plans nationwide and specifically for each of the Northern New England states.
5. Residential access lines in NNE declined 13.8% over the year 2008. What steps is the company taking to reverse this trend? What are the projected line losses for each month of 2009?
6. Please provide the Company's actual capital spending during 2008 (from the date of closing) for each of the NNE states and by entity for the remainder of the Company. Please provide capital spending projections for each quarter of 2009 and for 2010. Please break down the spending by major category, with spending towards the Company's broadband build out commitment shown separately from any other category for each NNE state separately.
7. Has the Company taken all possible steps to reduce costs without negatively impacting the provision of services to customers? Are there any future steps that the Company plans to take to reduce spending? If so, please describe.
8. Has the Company cut staffing to reduce costs? If so, please describe.

9. Please provide minutes of the FairPoint Board of Director's meeting in which the BOD decided to suspend the dividend.
10. Please explain the criteria upon which the Company will rely for reinstating a dividend.
11. Please specifically define what the Company means by the terms "efficiently manage cash flow" and "maximum flexibility" that the Company used on page 3 of its Motion.
12. How much is currently drawn and outstanding on FairPoint's Revolver and on its Delayed Draw Term Loan and how do those balances compare to what the final iteration of the Company's financial model filed with the Commission in March 2008 envisioned?
13. To the extent that the combined balances outstanding on the Revolver and Delayed Draw Term Loan exceed the combined balances projected in the last iteration of the financial model, such that FairPoint has more cash than projected, please explain specifically what factors (and quantify each) have changed that now require FairPoint to conserve cash flow following the first quarter of 2009.
14. If the Company had \$100 million of cash on hand as of the end of February, 2009, why is it still making this request?
15. Is any of the \$100 million of cash on hand as of the end of February, 2009 restricted cash? If so, please explain.
16. To the extent that the combined balances outstanding on the Revolver and Delayed Draw Term Loan are less than the combined balances projected in the last iteration of the financial model please explain fully why utilizing the remaining availability of the Revolver and the Delayed Draw Term Loan is not sufficient to satisfy any cash flow shortfall that may be facing the Company.
17. What was FairPoint NNE's year-end 2008 (and 4th quarter only) "*Accounts Receivable Turnover*" in days and what impact does the Company expect cutover to have on the current measurement? Using Receivable Days Outstanding data and the assumed negative impact, please estimate the "short-term negative impact on liquidity for the next several months" as noted on page 4 of the Motion.
18. Page 3 of the Motion suggests (but is not fully clear) that if the request in the Motion is approved, FairPoint will "make-up" the required principal retirements over the remainder of 2009. To clarify, if the Commission permits FairPoint not to make the March 31, 2009 prepayment, will FairPoint still retire the higher of \$35 million or 90% of its *total* 2009 Free Cash Flow or will it exclude the first quarter 2009 amounts and only retire the higher of \$35 million or 90% of its Free Cash Flow for the *last three quarters* of 2009?
19. Please explain why the company has or has not considered a stock buyback?
20. If the Company's stock price drops to zero, will any debt covenants be triggered?

21. Please provide a copy of the 1/30/09 Transition Agreement with Verizon and explain the cash flow changes as compared to if the Agreement didn't exist.
22. Please provide detailed support for FairPoint's statements on page 1 of its Motion that granting the request in the Motion is "consistent with the basic intent of the provision in the February 1 Order," that it "will not adversely affect the interests of consumers," and that it will not have the effect of "reducing the annual minimum payment amount for the full year 2009."
23. Please provide copies of FairPoint's "2009 business plans" that are referenced on p. 3 of FairPoint's February 27, 2009 Motion.
24. Please provide all confidential responses to information and data requests answered by the Company in Maine and Vermont related to the Company's Request.
25. Please provide copies of all information provided to the NH PUC and/or NH PUC Staff related to the company's Motion and its current financial status.